

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X
FALLS LAKE NATIONAL INSURANCE
COMPANY,

CIV: 22-cv-1473 (KAM) (PK)

Plaintiff,

-against-

**L.R. 56.1 STATEMENT OF
MATERIAL FACTS IN REPLY
AND SUPPLEMENT TO 56.1**

KALNITECH CONSTRUCTION CORP.,
DAVS PARTNERS LLC, STALIN RODRIGO
REYES ESPINOZA and ASK ELECTRICAL
CONTRACTING CORP.,

Defendants.
-----X

Plaintiff, Falls Lake National Insurance Company (“Falls Lake”), by and through its attorneys, MIRANDA SLONE SKLARIN VERVENIOTIS LLP, as and for its statement of material facts, pursuant to L.R. 56a.1., in Reply to the statement of facts of Kalnitech Construction Corp., Davs Partners LLC, and Ask Electrical Contracting Corp., state that there is no material issue of fact with respect to the following:

1. On March 11, 2019, General Contractor, ASK Electrical Corp. (“Ask”) entered into a “Short Form Prime Contract Between Owner & Contractor” (“Prime Contract”) with Owner, DAVS Partners LLC (“DAVS”) for the project known as 217-14 Hempstead Avenue, Queens Village, NY 11429. See attached hereto as Exhibit “B” a copy of the Prime Contract that was included in Exhibit A of DAVS’ and Ask’s Supplemental Response to Plaintiff’s First Set of Requests for Documents and Other Disclosure, which is also attached hereto.” (Falls Lake previously annexed the wrong contract to its original Rule 56.1 Statement as Exhibit B. In addition to the attached, see Exhibit 1 to Dav’s and Ask’s Rule 56.1 Statement).

ASK AND DAVS STATEMENT OF ADDITIONAL MATERIAL FACTS

1. The Falls Lake Policy included a “Primary and Noncontributory-Other Insurance Condition,” which provides in relevant part:

The following is added to the Other Insurance Condition and supersedes any provision to the contrary:

PRIMARY AND NONCONTRIBUTORY INSURANCE

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

See Exhibit "A."

RESPONSE: Admitted.

2. Pursuant to said provision, the Fall Lake Policy is primary to any other coverage available to the Responding Defendants and the Falls Lake Policy will not seek any contribution from such other coverage. Id.

RESPONSE: Deny. Ask and Dava have failed to prove the Falls Lake Policy covers them or is primary to any other coverage. In addition, Ask and Dava have not asserted any counterclaims as to primary coverage and contribution nor have they produced copies of their policies of insurance in this action and such claims are improper at this stage in the lawsuit.

Dated: Mineola, New York
July 6, 2023

MIRANDA SLONE SKLARIN VERVENIOTIS LLP
Attorneys for Plaintiff FALLS LAKE NAT. INS. CO.

s/Steven Verveniotis

Steven Verveniotis, Esq.
240 Mineola Boulevard
Mineola, New York 11501
P (516) 741-7676
F (516) 741-9060
Our File No.: 19-208